

# **Committee on Resources, Full Committee**

- - Rep. James V. Hansen, Chairman

U.S. House of Representatives, Washington, D.C. 20515-6201 - - (202) 225-2761

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## **Witness Statement**

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### **TESTIMONY BEFORE THE HOUSE COMMITTEE ON RESOURCES RELATING TO TITLE VII OF THE "CONSERVATION AND REINVESTMENT ACT" (HR701) TOM MULLEN, SUPERVISOR, 5<sup>TH</sup> DISTRICT**

**COUNTY OF RIVERSIDE, CALIFORNIA  
JUNE 20, 2001**

#### **INTRODUCTION**

Thank you, Mr. Chairman. My name is Tom Mullen. I am a County Supervisor in the County of Riverside, located in Southern California.

I appreciate the opportunity to appear before your committee today to urge your support for H.R. 701. This bill is unquestionably the most significant legislative initiative for conservation in the last several decades.

As you know, President Theodore Roosevelt is credited with shifting public attention to the importance of conservation. In his efforts to instill a conservation ethic into the American consciousness, it was Roosevelt who noted, "The nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased, and not impaired, in value."

Beginning with Roosevelt and the establishment of the National Forest Service at the turn of the century and continuing through the enactment of the National Environmental Policy Act and the Endangered Species Act, the federal government has played an important role in conservation efforts. As a result, Americans today share a proud conservation legacy.

You have a unique opportunity to continue that legacy by supporting the Conservation and Reinvestment Act (CARA).

Whether you hunt, fish, hike, or just enjoy the peace and tranquility of being outdoors, CARA will ensure that future generations can enjoy our nation's precious natural resources for many years to come.

#### **TITLE VII FUNDING**

Mr. Chairman, I have been asked to testify on Title VII of CARA. The provisions under this Title offer the kind of innovation and flexibility that would be embraced by Riverside County. We believe:

- Title VII gives private landowners the ability to work in a non-regulatory, incentive-based manner to achieve land management objectives that are mutually beneficial.
- Title VII builds on our citizens' strong sense of stewardship about their land by involving them in

problem solving and the implementation of solutions.

That being said, Mr. Chairman, we offer recommendations that we believe are essential to ensure greater flexibility in the application of Title VII funding, especially as it applies to our county. We strongly believe Title VIII should be expanded to include provisions which direct the Secretary to provide funding to local jurisdictions:

- Either directly or through the states to implement actions, including land acquisitions, to benefit recovery species or actions to prevent a species from becoming listed.
- To develop conservation plans and recovery agreements consistent with the ESA.

With the inclusion of these recommendations, Mr. Chairman, we believe Title VII would be complete, improving the overall utility of CARA for communities like ours.

We not only support CARA for its conservation benefits, we believe it has the potential to dramatically improve quality of life for millions of Americans in numerous other ways.

## **A GROWTH MANAGEMENT SOLUTION**

This legislation will make much-needed federal funding available to help state and local governments address critical infrastructure needs so they can effectively manage numerous challenges in the face of extensive population growth.

Allow me to explain by providing background on our experiences in Riverside County.

For several years, Riverside County has been pursuing locally-initiated conservation efforts to protect endangered species. But until just recently, our efforts were centered on single-species preservation. This proved to be a costly and highly inefficient approach.

The most significant and controversial Habitat Conservation Plan effort undertaken in Riverside County occurred 1988 when the federal government listed the Stephen's Kangaroo Rat (SKR) as an endangered species.

During the late 1980's, residential and commercial development accounted for a significant portion of the total activity in the western part of the county. Since that area also provided a majority of remaining habitat for the SKR, the listing precipitated an economic crisis as the Endangered Species Act -- specifically Section 9 take prohibitions -- effectively stopped public and private development in the region. The situation was exacerbated by the fact that at the time of the listing very little was known about the SKR, its geographic distribution, or its habitat needs.

Following the listing of the SKR, the Riverside County Habitat Conservation Agency (RCHCA) was formed to develop and implement a Habitat Conservation Plan for the SKR. The RCHCA is a public agency comprised of 9 members, 8 cities and the County of Riverside.

In August of 1990, the RCHCA received approval from the United States Fish & Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) for a short-term Habitat Conservation Plan (HCP) that covered 565,000 acres. Nine "study areas" encompassing approximately 78,000 acres were designated throughout Riverside County and development was restricted to ensure that land-use activities would not

preclude future preserve establishment. Over 47 percent of the land contained in the study areas were privately owned. There were a number of key elements included in the short - term plan; one of which involved the establishment of an SKR mitigation fee of \$1,950 per acre that was assessed in conjunction with the issuance of building, grading, surface mining, and other land disturbance permits in the HCP area. The habitat mitigation fee has generated over \$34 million to date. The RCHCA expended over \$30 million in local funds to implement the short-term plan. Approximately 85 percent of this sum was devoted to the acquisition of nearly 9,000 acres that were permanently dedicated to SKR conservation.

It is fair to say that the short-term plan was among the most controversial and widely monitored HCP's ever implemented. That plan has been the subject of extensive media coverage, ranging from the Wall Street Journal to National Geographic to television news programs like 20/20 and Eye to Eye. Additionally, the plan was a frequent subject of litigation; the RCHCA has expended over \$400,000 to defend seven lawsuits and has budgeted another \$500,000 in litigation defense costs for the remaining three lawsuits during the 2001/2002 fiscal year.

Three factors are primarily responsible for the extensive controversy surrounding this HCP: 1) regulations imposed on thousands of property owners located in the study areas; 2) lack of federal funding for HCP implementation and; 3) difficulties experienced in achieving consensus with the USFWS concerning an appropriate amount of conservation in the absence of a Recovery Plan for the SKR.

As a result of the incidental take prohibitions and other conditions included in the short-term HCP Implementation Agreement, over 3,000 privately held property owners in the study areas suffered significant hardships as a result of this conservation effort. Many property owners claimed that the marketability of their parcels was adversely affected because the regulations in the study areas adversely restricted the use of their land. The study area property owners became highly vocal opponents of the short-term HCP.

Both the total cost and sources of financing for the short-term HCP were highly problematical as well. The implementation budget was built upon the assumption that state and federal funds would cover approximately 50% of its cost. Unfortunately, that assumption proved to be erroneous. Of all expenditures related to the short-term HCP to date, approximately \$2 million has been provided by the State of California and \$30 million has been paid by local residents through collection of the SKR mitigation fee. Despite active funding solicitation efforts by the RCHCA, the federal government has provided no financial assistance to the short-term HCP.

The burden placed upon the residents of Riverside County to finance the SKR short-term HCP produced extreme frustration among the populace. This was based upon the belief that if federal law deems protection of the SKR to be in the national interest, then the federal government has an obligation to share in the cost of its conservation.

Amid these sentiments, the RCHCA developed a long-term HCP to replace the short-term HCP. This was approved in March of 1996. The preserve system consists of 7 core preserves encompassing over 41,000 acres including over 12,500 acres of occupied SKR habitat. Implementation of the long-term HCP is expected to cost approximately \$15.3 million, including \$11.7 million from the RCHCA and \$3.6 million from federal sources. Combined with the \$30 million already expended on the short-term HCP, more than \$46 million will be spent on the SKR conservation effort. Of that amount, approximately \$42.7 million - or 91 percent - comes from the local level.

In areas such as Riverside County, single species HCP's only address a fraction of the total habitat

conservation issue. The development and implementation of large scale single species HCP's is extremely expensive and time consuming as well as controversial.

After nine long years, and millions of dollars, we learned our lesson: with multiple species listed on the threatened and endangered rolls, we finally realized that habitat conservation must take place on a broad-scale and it must take place within the context of an infrastructure plan that addresses long-range transportation and land-use needs.

A comprehensive approach provides the highest level of certainty to property owners, builders, farmers, environmentalists, and local governments concerning their future obligations and benefits under the ESA.

Riverside County is one of the largest counties in the nation. It covers 7,300 square miles. By way of comparison, the states of New Jersey and Massachusetts cover approximately 7,400 square miles and 8,200 square miles, respectively.

Riverside County is also one of the fastest growing large counties in California and the United States. Its population will double from 1.5 million to 3 million in the next 15 to 20 years.

According to Southern California economist John Husing, more people will move to Riverside County over the next 20 years than to seven other states, including Arizona, Washington and North Carolina.

Inevitably, the impact of such a population boom and the challenge of balancing the related housing, transportation and economic needs with our limited natural resources becomes critical to our very survival.

The challenge of planning for growth is not unique to Riverside County. But we have devised an innovative model to address this pressing concern.

In 1999, we launched the Riverside County Integrated Project (RCIP). The RCIP is a stakeholder driven process that unites builders, property owners, farmers and government behind a long-range planning effort that incorporates three distinctive elements - conservation, transportation and land-use.

What makes the RCIP approach unique is the premise that the environment must be addressed the same as any other piece of critical infrastructure. Just as you must have utilities, roads and schools to support a growing population, you must address environmental constraints or you cannot grow.

The normal approach to development in California has been to plan the project first then attempt to mitigate. The RCIP begins with the development of a multi-species habitat conservation plan (MSHCP) and, we hope, a watershed special area management plan (SAMP), and then integrates land use and transportation elements that minimize the environmental impacts while still addressing housing demands, job creation, and congestion relief. The RCIP includes:

- A Multi-Species Habitat Conservation Plan (MSHCP) which forms the nucleus of an open space plan for the western part of the County. The goal of the plan is to address up to 164 species. County staff, a consultant team, resource agencies, and stakeholders are working closely together to create a conservation and implementation strategy which allows the maximum coverage of species while respecting individual property rights.
- An updated General Plan for the unincorporated portion of the County, which includes land use,

circulation, housing, open space, conservation and other mandatory elements of the general plan in conformance with state statute. Close coordination between public and private sector stakeholders, including all the cities in the County, is viewed as essential for the development of a plan that can be successfully implemented.

- The Community and Environmental Transportation Acceptability Process (CETAP), which identifies future transportation corridors in the western part of the county and provides the appropriate environmental documentation to allow early reservation of the necessary rights to develop the corridors. These corridors will be designed to meet future needs not only for the mobility of autos, buses, and trucks but also to provide the ability to move goods, information and products, as well as to provide room for implementation of transit well into the next century. The CETAP forms an essential component of the County's circulation element and its arterial highway plan, associated with the General Plan. The goal of the program is to improve mobility both within Riverside County and the Southern California region.
- A Special Area Management Plan (SAMP) to address watershed management and obtain clearance 404 and 1600 requirements is the desired fourth element of the plan. We are currently seeking funding that will allow the Army Corp of Engineers to work with the County to develop the SAMP.

The essence of RCIP is in the integration of land use, transportation and conservation planning, and implementation, to develop a consensus for the future development of Riverside County. As a first-of-its-kind endeavor, the RCIP is intended to be model for making the ESA work while providing for the long-term development and economic growth of the County. Recognizing the need for this new and different approach, the project is guided by five overarching principles.

- The process must be a bottom-up process. The public, along with stakeholder groups, must drive it. Development of the RCIP requires close guidance from stakeholders and citizens throughout the County. In order to facilitate this guidance, three Advisory Committees were established; one for each of the plan elements. Membership in these committees is comprised of citizen appointees and representatives of a variety of stakeholders and public agencies. The advisory committees number over 100 individuals that represent diverse interests. Cities within the County participate both through the Advisory Committees and through the two sub-regional Councils of Government (COGs), the Western Riverside Council of Governments (WRCOG) and the Coachella Valley Association of Governments (CVAG). Advisory committees meet monthly to review progress of the RCIP elements and provide input on data presented. Various subcommittees to the three advisory committees are often meeting weekly to address specific issues and report their recommendations back to the full advisory committees. In addition to the advisory groups, a management committee that includes senior officials from all the participating state and federal regulatory agencies confer on a weekly conference call.
- The recognition of the interdependence between the region's future transportation, habitat, open space, recreation, land use, and housing needs is essential.

Without solving the conservation issues, as mandated by the Endangered Species Act, the successful identification and implementation of new transportation corridors and continued expansion of our job bases simply is not possible.

Everyone, from the private landowners and development interests to our state and federal partners, has a financial responsibility to ensure the completion of the plan and its implementation.

The equity of the funding plan is at the heart of RCIP. The funding plan must recognize the obligation of the local land owners and developers to mitigate the impacts of their projects. However, this must be in the context of the state and national policy decision that conservation of endangered species is a state and national priority and should be supported with state and federal funding. Further, there is long-term value to the County and the Southern California region as a whole to address housing and transportation needs in the region. The recognition of joint responsibility and agreement on fair and equitable sharing of the implementation costs is essential.

- Make use of the best available scientific information.

Working with the University of California at Riverside (UCR), the USFWS and the CDFG, we have attempted to collect all available data on species occurrences and habitat and consolidate it in our Geographic Information System (GIS). The consultant team has augmented this with an extensive review of the literature available on each of the species anticipated to be covered under the MSHCP. More than 10 thousand data points collected from museum records; local, state and federal data bases; literature sources; and field notes were compiled. The resulting data base of information, managed by UCR, will continue to be updated as additional information becomes available.

UCR also coordinates a Scientific Review Panel (SRP), which provides formal academic review at key points in the MSHCP planning process. To our knowledge, the incorporation of an SRP is a unique element of the RCIP. The SRP will help ensure independent critical review of the data used to support policy decisions. Furthermore, the SRP review will address concerns expressed by critics both in the scientific and environmental communities and in the general public who contend the conservation has generally lacked scientific credibility (Sullivan and Scott, March/April 2000).

- Use incentives and market based approaches where feasible.

To avoid many of the criticisms of earlier plans, one of the goals of the RCIP has been to look for opportunities to create incentives for property owners to participate in the MSHCP. The MSHCP Advisory Committee is currently meeting with the General Plan Advisory Committee to develop incentives and policies that will help implement the MSHCP and concurrently support programs in the General Plan. Incentives include density credits or transfers, conservation credits that reflect conservation values and can be sold in an open market, or conservation easements that might be mutually beneficial to the property owner and to the implementation of the MSHCP.

The RCIP offers an innovative model for a comprehensive regional approach to addressing the ESA as part of an integrated program. The RCIP is a superior alternative to the traditional project-by-project approach. While not without significant challenges and risks, it offers advantages to local, state, and federal agencies in implementing their land use, infrastructure, development and regulatory responsibilities. Moreover, it offers the advantages of a regional approach to local property owners and developers while addressing many of the objections they have had to previous habitat conservation plans. Through the RCIP, a broad array of stakeholders and individual citizens are afforded opportunities to participate and communicate what is most important to them in order to improve their quality of life now and into the future.

## **ADDITIONAL NEED**

Although the ESA is a federal mandate, the cost of compliance falls on a limited few. It is only reasonable that implementation of national policies should be accompanied by an equitable amount of federal funding.

Funding for conservation incentives for small landowners as proposed under Title VII will be helpful to RCIP. Riverside County has many areas that are characterized by parcel sizes of 2.5 to 10 acres. The ability to offer incentives to conserve a portion of these properties is the only feasible method of achieving conservation in some instances.

However, these parcels only represent a small percentage of the total privately owned land (153,000 acres) that must be conserved under our project. Therefore, we wish to register our support for Title II and Title III. Full funding under these Titles would be of paramount importance in helping us reach this enormous conservation goal.

In addition, we support a modification of Title III to clearly acknowledge that one of its primary objectives is to enable state wildlife agencies to secure lands, in pursuit of helping cities and counties as they implement habitat conservation plans. This would greatly help local jurisdictions meet the un-funded mandates associated with the ESA.

Incentives for small property owners is an essential element but must be coupled with sufficient funding to purchase lands when necessary. This is especially true in areas of western Riverside County where land development pressure is high and land is held for its future development value. Property owners here most often want to develop their land or sell their land. Conservation incentives will not be a sufficient enticement for these property owners.

We believe that by providing both conservation incentives and direct funding for land acquisition, the ESA can be made to work in areas such as Riverside County.

## CONCLUSION

You have a unique and profoundly important opportunity to help give folks in Riverside County, and other growing cities and towns, the promise of a future filled with hope - access to affordable housing for families, good schools for their children, new roads and freeways for safe passage, progressive and dynamic economic development and the protection of priceless natural resources.

These are the sweeping benefits this landmark legislation can help provide.

Without this legislation, our county will become a textbook example of fragmented urbanization marked by extreme social and economic disruption.

We will have inflated housing prices that few families can afford, prohibitive traffic congestion that restricts the flow of commerce and people, and uncoordinated natural resource protection. Moreover, without comprehensive habitat conservation, all future development projects will likely wind up in court, at enormous cost to taxpayers.

This is why your support for CARA is critical for the future of Riverside County and for thousands of other communities across the nation.

Thank you.

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